

**THE LABOR COMMISSION
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Wednesday, June 10, 2009 - 11:45 A.M.
Room 319, Heber Wells Building
160 East 300 South
Salt Lake City, Utah**

The following Advisory Council members were in attendance:

Ralph Astorga, President USWA Local 392
Dawn Atkin, Esq.
Thomas Bingham, President, Utah Manufacturers Association
David Bird, Esq.
Reo Castleton, SL County Fire Department
Phillip Stoll, Esq. for Brian Kelm, Esq.
Edward Holmes, M.D., RMCOEH
Susan Kelly, Liberty Mutual
Jeff Rowley, Risk Manager, Salt Lake County
Brad Tibbitts, Utah State Insurance Department
Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter
Dennis Lloyd for Ray Pickup, Workers Compensation Fund

The following Advisory Council members were excused:

Brandt Goble, Painters and Tapers Local 77
James V. Olsen, President, Utah Food Industry Association

Legislative Liaison Present:

Senator Karen Mayne
Rep. Mike Morley

Others Present:

Sherrie Hayashi - Commissioner
Alan Hennebold - Deputy Labor Commissioner
Larry Bunkall, Industrial Accidents Division Director, Labor Commission
Robyn Barkdull – Public Information Officer, Labor Commission
Elena Bensor – Workplace Safety Manager, Labor Commission
David Lamb – Administration Director, Labor Commission
Dr. Alan Colledge – Medical Director – Labor Commission
Ron Dressler – Policy Manager, Labor Commission
Richard LaJeunesse – Presiding Administrative Law Judge
Maggie Karpuk - NCCI
John Deacon - NCCI
Patricia Owens, Office of Legislative Research and General Counsel

WELCOME

Welcome – Commissioner Hayashi

Commissioner Hayashi brought the meeting to order at 12:00p.m. She asked Council members to be aware that future meetings will start at 11:45, as noted on the agenda notice.

1. Miscellaneous Business - Commissioner Hayashi

A. Tom Bingham moved to approve the minutes of the April 8, 2009 meeting. **Dawn Atkin** seconded the motion which passed unanimously.

B. Commissioner Hayashi reviewed the scheduled dates for 2009 WCA Meetings: August 12 and October 14. Larry Bunkall asked if the October 14th date could be changed to October 7th in order to meet the time frame for the recommendation of premium assessment due by October 15th. The Council agreed to meet on October 7, 2009.

C. The Commissioner announced that an ad hoc committee would be formed to prepare a report on the insurance premium tax to the Business and Labor Interim Committee for their September 2009 meeting. **David Bird, Dawn Atkin** and **Dennis Lloyd** were asked to be members of the committee. **Alan Hennebold** and **Larry Bunkall** will represent the Labor Commission and will set up an initial meeting and notify all members.

2. Update on the Workplace Safety Account and the 2009 Projects.

Elena Bensor announced that grants have been awarded for the 2009-2010 year. She distributed a handout showing the recipients and the amounts awarded. She said the number of applications received was an increase over last year, and is most likely due to the recessed economy and notoriety of the grant application program.

Commissioner Hayashi thanked those who sat on the awards committee and noted that the grants this year were very diverse and will create great community resources.

3. Update on 2009 Utah Medical Fee Guidelines

Dr. Colledge reminded Council members that the recommendation in the April meeting to adopt the 2009-2010 RBRVS schedule was based on the expectation that the proposal would be revenue neutral. Information obtained in April by NCCI now indicates otherwise. NCCI is now estimating the impact of the proposed changes to the Medical Fee Schedule to be an increase of 1.4% (\$8.6M) in Utah's overall workers' compensation system costs. Information had been sent to all council members outlining the impact of the changes in the physician fee schedule.

Discussion was held as to whether to continue with the 2008-2009 fee schedule or adopt the new 2009-2010 fee schedule with the estimated impact. Concern was expressed about losing care providers for injured workers if the new fee schedule wasn't adopted and rates did not keep up with other payers in the state.

Council members also asked about the potential that the 1.4% anticipated impact might actually further increase based upon December 2009 filings, but **Maggie Karpuk** of NCCI expressed confidence that the 1.4% rate was an accurate assessment.

Discussion was also held regarding an effective date of the new fee schedule. Because of the timing, the usual July adoption cannot be met. **Ms. Karpuk** suggested a December 1 adoption to match the filing information. The Council also agreed to work with NCCI to appropriately evaluate the rate structure to be consistent with a December adoption each year.

MOTION: Tom Bingham moved to adopt the 2009-2010 RBRVS schedule and proceed through the rulemaking process to make the schedule adoption effective December 1, 2009. The motion includes

working with NCCI to appropriately evaluate the rate structure to be consistent with a December adoption each year.

4. Report on Workers' CompCheck public awareness campaign

Robyn Barkdull told Council members that the media campaign for the new online Proof of Coverage system (Workers' CompCheck) had completed a May 2009 run. She showed the 30 second PSA featuring Governor Huntsman as spokesperson and said there were also two 15-second PSA's and Spanish versions of the same ads. The video ads ran on KSL, KUTV and Fox 13. In addition, the ads ran on KSL Radio and there was a monster ad on Internet websites at ksl.com and fox13now.com. **Larry Bunkall** said the ad had generated a considerable increase in Labor Commission website hits as a result.

Dawn Atkin mentioned there was an article in the Tribune which indicated that the Commission does not have the resources to investigate claims of uninsured employers. The Commission was not aware of this article and **Ms. Atkin** said she would forward a copy of it to the Commissioner.

5. Review on Workers' Compensation Insurance Premium Surcharge Funds

Larry Bunkall announced that Deloitte Consulting LLC has been selected to prepare the actuarial report for the Employers Reinsurance Fund (ERF) and the Uninsured Employers Fund (UEF). Previously this has been done by Milliman, but Deloitte Consulting LLC was awarded the new contract based upon the bid proposals.

David Lamb reviewed the interest earned and current balances in the ERF and the UEF, as well as the Workplace Safety Account and the Industrial Accidents Restricted Account. Mr. Lamb identified a potential issue in that the statute did not identify that the new Industrial Accident Division Account should retain interest generated by amounts deposited in that account.

MOTION: David Bird moved to advise the Commission to prepare legislation which mandates that any interest earned by the WC insurance premium surcharge funds comes back into the fund which generated the interest. **Tom Bingham** seconded the motion which passed unanimously. **Sen. Mayne** agreed to sponsor the legislation and **Dave Lamb** will help get information to the Senator.

Dave Lamb will give a report at the next meeting of information regarding contribution amounts.

6. Update on Utah Supreme Court "Merrill" Decision

Alan Hennebold told Council members that in April 2009, the Utah Supreme Court ruled that the social security retirement offset provision in the Utah Code is unconstitutional. The Court has not yet reached a decision as to retroactive application of the removal of the offset. As a result of this decision, the Industrial Accidents Division has complied with that ruling by: encouraging all carriers to immediately eliminate the SS offset as of April 24, 2009; notifying ERF claimants with SS offsets by letter of the court decision; mailing a refund check for April 24 to April 30, 2009, to all ERF claimants; and mailing the full amount, without offset, for May 2009 to all ERF claimants.

Mr. Hennebold then discussed the *Smith & Sons v. Labor Commission* and *Ameritech v. Labor Commission* cases saying the Utah Supreme Court held that medical benefits are included in the term "compensation" as found in Utah Code. However, the court did not attempt to apply the apportionment provisions. He said the Council may want to consider the fundamental policy of whether an injured worker's expenses for medical care necessary to treat an occupational disease should be apportioned

between work and non-work contributing factors. Also, if apportionment is appropriate, what factors should determine the apportionment, and whether the current statute clearly states the factors and how they should be applied.

MOTION: Dawn Atkin moved to advise the Commission to establish a committee to meet and examine the considerations and report to the Council at the next meeting. **Jeff Rowley** seconded the motion which passed unanimously.

Mr. Hennebold asked Council members to contact him if they had an interest in participating on that committee.

7. Consider Increases in WC Medical Panel compensation

Richard LaJeunesse said he had met with the medical panel chairs in May 2009 and it was suggested that current rates of \$250/hour for the chair of the medical panel and \$225/hour for members of the medical panel each be increased by \$25 per hour.

MOTION: Dawn Atkin moved to increase the hourly compensation for the chair of the medical panel to \$275 and the members of the medical panel to \$250. **Jeff Rowley** seconded the motion which passed unanimously.

8. Report on Attorney Survey of Labor Commission ALJ's

Alan Hennebold distributed a copy of the survey sent to practicing attorneys who have appeared before Commission ALJ's during the course of the year. He said responses to the surveys are about 30 – 50%, and provide the Commission with a tool to evaluate the adjudicative process and identify and correct any possible problems. The surveys are anonymous and can either be completed through the internet or sent through the mail process.

9. WC Legislation for the 2010 Legislative General Session

The social security offset for retirement was discussed.

MOTION: David Bird moved that the Commission ask **Senator Mayne** to work with **Representative Harper** to open a bill file which will remove the statutory social security offset for retirement, and insure the bill does not address any issues which may inhibit the passing of that legislation. **Dawn Atkin** seconded the motion which passed unanimously.

No other items for legislative consideration were discussed.

10. Other Business

Commissioner Hayashi reminded Council members the next meeting will be held on August 12, 2009, and will begin at 11:45 a.m. She adjourned the meeting at 1:35 p.m.